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FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION; ALTERNATIVE APPROACHES AND WAYS AND MEANS WITHIN THE UNITED NATIONS SYSTEM FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

National institutions for the protection and promotion of human rights

Updated report prepared by the Secretary-General

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Introduction

1. The present report is submitted in pursuance of General Assembly resolution 44/64 of 8 December 1989, by which the Secretary-General was requested to prepare, with the assistance of experts if necessary, a report containing conceptual models of national institutions for the promotion and protection of human rights, to be submitted to the Commission on Human Rights at its forty-seventh session. In addition, the General Assembly invited the Secretary-General to include in his updated report all the information provided by Governments and any additional information that Governments may wish to provide, with particular emphasis on the functioning of various models of national institutions in implementing international standards on human rights, as well as a list of existing national institutions with contact points and a bibliography of relevant materials. Such a list, together with the bibliography, will be issued as an addendum to the present report. The General Assembly requested the Secretary-General to report to the General Assembly at its forty-sixth session on the implementation of the above resolution.

2. The subject of national institutions for the protection and promotion of human rights has been dealt with since 1979 in several resolutions of the General Assembly and the Commission on Human Rights and this is the fifth report the Secretary-General is submitting on this question (see A/36/440 presented in 1981, A/38/416 submitted in 1983, the consolidated report E/CN.4/1987/37 submitted in 1987, and E/CN.4/1989/47 and Add.1 submitted in 1989).

3. As indicated in previous reports, nearly all national institutions have a bearing upon both the protection and the promotion of human rights. While the distinction between "promotion" and "protection" of human rights may, in certain circumstances, be convenient for the clarity of the analysis, it seems somewhat artificial, taking into account that most institutions have indeed a dual purpose (promotion and protection). The report has been prepared on the basic understanding that all relevant institutions, whether intended for the "promotion" or for the "protection" of human rights, whether public or private, contribute to the full realization of those rights in a closely interrelated manner.

4. In the report the term "human rights" has been used to cover all the rights recognized in the Universal Declaration of Human Rights, the Covenants and other relevant human rights instruments of the United Nations. For the purpose of the report, the term "institution" is understood to mean the organs, authorities and agencies which have as one of their primary functions the promotion and protection of human rights.

5. The present report is mainly based on information received from Governments in pursuance of the request made by the Secretary-General on 20 June 1989 and on 17 July 1989, in a note verbale sent to Governments, inviting them to forward any relevant information they may wish to provide, with particular emphasis on the functioning of various models of national institutions in implementing international standards on human rights. It also contains information, whenever available, on conceptual models of national institutions for the promotion and protection of human rights. It is further

intended to supplement information provided in previous reports of the Secretary-General on various national institutions for the protection and promotion of human rights which currently exist in several countries.

6. As at 17 December 1990, the Secretary-General had received replies from Bahamas, Burkina Faso, Egypt, Finland, France, Gambia, Guatemala, Japan, Mexico, Morocco, the Philippines, Singapore, Sweden and the Union of Soviet Socialist Republics.

7. The scope and purposes of the present report are the same as those of the previous reports submitted by the Secretary-General on the subject matter. However, as most of the Governments' replies did not contain information relating to the promotional aspects of human rights by the institutions, such references, whenever available, are, for convenience, adequately reflected within the report. In addition, the information gathered for this study and the examples mentioned therein should in no way be regarded as exhaustive.

I. JUDICIAL CONTROL OF RESPECT FOR HUMAN RIGHTS

8. As mentioned in previous reports, in most countries the role of legislative organs consists in enacting laws and regulations with a view to implementing the principles formulated in the constitution. Countries which do not function under a written constitution in general rely on the Parliament or on a similar legislative organ to ensure the protection of human rights.

A. Courts of general jurisdiction and constitutional courts

9. The judiciary plays a major role in enforcing and safeguarding human rights at the national level. Courts and, in particular, courts of a general jurisdiction are endowed with great powers to enforce human rights, including the very basic function of providing a fair, open and impartial hearing for persons accused of crimes and other illegal acts.

10. The essential mission of those responsible for the functioning of the judicial organs is to state and strictly apply the law. In all countries, the judiciary enjoys by law certain guarantees of independence and impartiality.

11. One of the most important ways in which the courts may strengthen the protection of human rights is through judicial examination of the constitutional validity of enacted laws and administrative measures. Courts of this nature have been established in a number of countries. They are solely concerned with determining the constitutionality of enacted laws and are often called constitutional courts.

12. Courts of general jurisdiction also provide forums in which individuals can challenge legislative or executive acts, as well as actions by public authorities which may be illegal. Such a recourse is important in that it helps to hold public officials legally accountable for their actions.

13. For instance, in Finland it was reported that the courts of general jurisdiction, of which the Supreme Court is the highest, will in their decisions apply the Constitution Act as well as such international human rights conventions as the International Covenant on Civil and Political Rights and the European Convention on Human Rights which Finland has incorporated into its own legislation. In their judgements, however, the courts hardly ever explicitly refer to them.

14. Similarly in Singapore, the courts protect individual freedoms and human rights that are enshrined in the country's Constitution. Articles 9 to 16 of the Constitution of Singapore provide for various fundamental liberties such as freedom of speech, assembly and association, freedom of religion, prohibition of slavery and forced labour, equality before the law and protection against retrospective laws and repeated trials. The system of administration of justice by the courts of Singapore protects individual freedom and human rights. Accordingly, the Attorney-General advises the administration on various aspects of the rights and freedoms of citizens under the law. In the implementation of government policies, various ministries and organs of State are reminded of the principles of administrative law which ensure that individual freedoms are not illegally transgressed.

15. According to the Government of Sweden, its Constitution protects the rights and freedoms of the community at large, while protection from assault by private persons is to be found in the Penal Code. Primary responsibility for the enforcement of law devolves upon the courts, which are independent of Parliament and the Government. As a general principle the courts of general jurisdiction enforce civil law and criminal law legislation.

16. In the Soviet Union, the organs for the maintenance of law and order, for which protection of citizens' rights is one of the main tasks, occupy a special place in the system of State organs. Pursuant to the Fundamentals of Legislation of the USSR and the Union Republics on the Judicial System as adopted on 25 June 1985, the courts must have as their goal in administering justice the protection of "citizens' social, economic, political and personal rights and freedoms as proclaimed and guaranteed in the Constitution of the USSR and Soviet law" against all infringements. In order to increase the courts' powers in this regard, the Act of the USSR on the Procedure for Appeal to the Courts against Unlawful Acts by Officials that Infringe Citizens' Rights was adopted in 1987. A new Act on the Status of Courts in the USSR was adopted on 4 August 1989. A draft law on liability for contempt of court and interference in the consideration of cases is in preparation and measures are being taken to rationalize judicial activity. The basic objective of the judicial reforms now in progress is substantially to enhance the role of the courts as guarantors of legality and law and order, of citizens' rights and freedoms, and of compliance with the law by all organizations, officials and individual citizens.

17. In Sweden, the protection of the individual and the implementation of international standards on human rights are regulated by the Constitution. Of these rights and freedoms, some are absolute in the sense that they can be restricted only if the Constitution is amended; others may be restricted to some extent by laws which the Parliament enacts. The public authorities may not invade anyone's rights and freedoms by imposing punishment or exercising physical violence unless permitted in law. A restriction may be made only under the following conditions: it shall satisfy a purpose that is acceptable in a democratic society; it may not extend so far as to pose a threat to the freedom of opinion as one of the foundations of a democratic Government; it may not be made solely on account of political, religious, cultural or similar views.

18. According to information provided by the Government of Egypt, the Provisional Constitution promulgated on 11 September 1971 constitutes the basic instrument that defines the human rights and obligations of Egyptians and guarantees the equality of all citizens in regard to their rights and obligations, without distinction on grounds of sex, origin, language, religion or belief. The Constitution provides that personal liberty is an inviolable natural right that must be safeguarded, that any person who is arrested or whose liberty is restricted must be treated in such a way as to preserve his human dignity, that homes are inviolable and can be entered and searched only under the terms of a substantiated court order and in accordance with the provisions of the law. The Constitution also provides for the protection of the private lives of citizens and places the State under an obligation to guarantee freedom of belief, of religious observance, opinion, press, publication and information media, as well as freedom of scientific research, freedom to reside in and return to the country, to migrate permanently or

temporarily, the right of private, peaceful assembly without the need for prior notification, the right to form associations in the legally specified manner, and the right to form trade unions and federations.

19. In the Soviet Union, the growing involvement in the promotion and protection of human rights of all elements of the social and political system is one of the particularities of the radical changes under way. The obligation for organs of State power to protect the rights of Soviet citizens is laid down in article 4 of the Constitution, which provides that "the Soviet State and all its bodies shall function on the basis of socialist legality, ensure the maintenance of law and order and safeguard the interests of society and the rights and freedoms of citizens". Special attention is now being paid to creating clear legislative and administrative conditions for, and firm legal guarantees of, discharge of this most important constitutional obligation by all State, government and public organizations.

20. According to the Government of Guatemala, human rights and fundamental freedoms are fully guaranteed under the Political Constitution of the Republic, which is the basis of the country's legal system, and has been in force since 14 January 1986. Under section I, "The human person; the aims and duties of the State", article 1 of chapter 1 states: "The State of Guatemala is organized in such a way as to protect the individual and the family; its supreme aim is the achievement of the common good". The duty of the State, as specified in article 2, is to "guarantee, for the inhabitants of the Republic, life, liberty, justice, security, peace and the full development of the individual". Under section II, "Human rights", articles 30 to 39 contain provisions defining, guaranteeing and promoting individual, social, civic and political rights. Article 46 states specifically: "It is established as a general principle that, the matters of human rights, treaties and conventions accepted and ratified by Guatemala take precedence over internal law". Under section VI, "Constitutional guarantees and defence of the constitutional order", chapter IV deals with the Constitutional Court, and chapter V with the Human Rights Commission and the Attorney for Human Rights. In order to guarantee the defence of the constitutional order, the Political Constitution of Guatemala, under article 268, establishes a constitutional court as a permanent tribunal with special jurisdiction, whose principal function is the defence of the constitutional order. The Constitutional Court is independent of any other organ of the State and exercises specific functions assigned to it under the Constitution and the relevant laws.

21. According to information transmitted by the Government of Finland, the most essential human rights and fundamental freedoms are regulated in the Constitution Act of 1919, which is the basic constitutional document. These rights are included in chapter II of the Act, which is restricted to the rights and legal protection of Finnish citizens only. In practice, however, foreigners enjoy most of the same rights and freedoms. In September 1989 the Government of Finland set up the Parliamentary Committee for Constitutional Law, whose task is to recommend extending the legislation concerning basic human rights and fundamental freedoms to all persons within the jurisdiction of Finland. The provisions on fundamental rights contained in the Constitution can be amended or exceptions thereto made only in accordance with a special procedure requiring a qualified majority in Parliament. Parliament, through its exercise of legislative powers, plays a central role in the

protection and promotion of human rights. The function of the Parliamentary Committee for Constitutional Law is essential in this respect. Since Finland does not have separate constitutional courts, the Committee also has the same functions as such courts may have in certain other countries. The Committee deals, as a preparatory body, with matters concerning enactment, amendment or abrogation of the Constitution or exceptions thereto. It also presents, when requested by other committees, its views on questions regarding the Constitution. The importance of the Committee is emphasized by the fact that the courts or administrative authorities do not have the possibility of examining the constitutionality of laws. The President of the Republic can also raise the question of constitutionality of laws which are to be enacted. If the President finds that a law which has been dealt with by the Parliament as an ordinary law should have been passed in accordance with the order of procedure required for the enactmen' of constitutional law, he may decide not to confirm the law in question. Apart from those referred to above, there are no other organs in Finland empowered with the authority to examine the constitutionality of laws. Should a statutory regulation or any other provision given in an administrative order be in contradiction of the constitutional norm or an Act of Parliament, a judge or any civil servant must, according to paragraph 92 of the Constitution Act, refuse to apply it.

22. In the Soviet Union, the Government stated that fundamental changes are taking place in the system of representative organs of State power. The elections held on the basis of the new electoral law have led to the formation of a body of deputies who are genuinely popular representatives. Proceedings in the Congress of People's Deputies and during the first session of the Supreme Soviet have shown that the Soviet Union now has a qualitatively new parliamentary institution. Much is expected from the work of committees of the USSR Supreme Soviet specially concerned on a regular basis with various aspects of the protection of rights. On 26 June 1989, the USSR Supreme Soviet adopted a series of decisions establishing a number of committees of the USSR Supreme Soviet, including the Committee on Glasnost and Citizens' Rights and Petitions; the Committee on Legislation, Legality and Law and Order; the Committee on Women's Affairs and Protection of the Family, Mothers and Children; the Committee on Veterans and Disabled Persons; the Committee on Youth; the Committee on Health Preservation; the Committee on the Environment and the Rational Use of Natural Resources; the Committee on the Work of Soviets of Peoples' Deputies and the Development of General and Local Government and the Committee on Science, Education and Culture.

B. Special courts and tribunals

23. The legal systems of many countries have provided specialized judicial bodies with limited competence, which function apart from courts of general jurisdiction. These specialized courts are established for a number of reasons, including in particular issues of a socially or politically sensitive nature. Moreover, the character of some legal issues and questions may require a certain level of technical knowledge for a fair adjudication of the matter. The creation of these courts helps to ease the case load of the courts of general jurisdiction, which are frequently too overburdened to provide aggrieved parties with a timely decision on their case.

1. Labour Court

24. According to information received by the Government of Finland, the Labour Court deals with questions relating to collective agreements in the labour market and settles disputes arising from provisions of the labour legislation. Its decision is final. The decisions of this court are not of any practical significance for the interpretation of the provisions on fundamental rights and freedoms in the Constitution Act.

2. Insurance courts

25. In Finland, the insurance court is an appeal organ in certain social security matters. It deals with complaints about national pensions, accident insurances and indemnities for military injuries. In certain cases its decisions are final.

C. Administrative courts

26. The protection of human rights may be provided either within a unitary judicial system or under a dual system of civil courts (competent to hear civil disputes and penal cases) and administrative courts (competent to rule on complaints against administrative acts). In this regard, in Finland, the supreme judicial power related to administrative appeals is exercised by the Supreme Administrative Court. It has referred to the provisions of the Constitution Act in some of its decisions.

27. According to the Government of Gambia, the Attorney General receives all petitions concerning individual rights and takes actions on such matters. The courts are also available for the effective implementation of the individual rights and liberties as per the society in general. The police protect the individual and ensure that he or she has full enjoyment of basic human rights in accordance with the provisions of the Charter of the United Nations.

28. In Sweden, decisions made by administrative authorities, which are also independent of the Government, can be appealed against through a special system of administrative courts. These courts are guided by special legislation, which contains fundamental guarantees of legal protection. As a rule, an appeal against a decision of an administrative authority can be passed on to a higher authority. In principle, complaints can be taken to the Government, if appeals do not fall under the administrative courts.

II. NON-JUDICIAL ORGANS SUPERVISING THE OBSERVANCE OF THE LAW

29. Within the framework of the judicial system, many countries have established organs to assist the judicial process in providing adequate protection of individuals' rights.

A. The ombudsman and similar institutions

30. As an institution of a sui generis nature with a multifaceted character, the ombudsman is perceived as Scandinavian institution, playing the role of an independent mediator. In some instances the ombudsman is not an individual but a collegiate body. The primary role of the ombudsman is to protect the rights of the individual who believes he is the victim of unjust acts on the part of the public administration. Generally appointed by the Parliament, the ombudsman often has a supervisory role acting on behalf of Parliament. In the past several decades, an ombudsman or mediator's office has been established in a number of countries outside Scandinavia. Australia, Austria, Barbados, Canada, France, Ghana, Guyana, India, Jamaica, Japan, Mauritius, New Zealand, Portugal, Spain, Trinidad and Tobago, the United Kingdom and certain states in the United States have all used the ombudsman system in one form or another. Moreover, several African countries (Nigeria, the Sudan, the United Republic of Tanzania and Zambia) have established collegiate bodies or commissions, which function with the authority and jurisdiction of the ombudsman. This has been reflected in a previous report prepared by the Secretary-General on the subject (see A/36/440, A/38/446, E/CN.4/1987/37 and E/CN.4/1989/47). Essentially, the ombudsman in all countries follows similar procedures in the performance of his duties. He receives complaints from aggrieved parties, and subsequently initiates an investigation if the claim has merit and falls within his jurisdiction. The ombudsman is generally granted access to documents of all authorities within his jurisdiction, which are pertinent to the investigation. He then usually issues a statement of recommendation based on his investigation, which is given to both the complainant and the office or authority against whom the complaint has been lodged. If the recommendation is not acted upon, the ombudsman may then submit his recommendation to Parliament.

31. In Sweden, the ombudsman system consists of a number of institutions: the Parliamentary Ombudsman, the Equal Opportunities Ombudsman, and the Ombudsman Against Ethnic Discrimination. The four Parliamentary Ombudsmen, who are almost always prominent judges, are appointed by Parliament. Their main duty is to see that the courts and the administration observe and enforce the nation's laws, especially those which safeguard the freedom, security and property of its citizens. The Ombudsmen will always investigate a reported abuse by an authority if a complaint is addressed to them. Any citizen who feels that his or her rights have been violated may submit a written complaint to the Parliamentary Ombudsman. The Ombudsmen may also investigate matters on their own initiative. It is the duty of the Parliamentary Ombudsman to inspect, from time to time, authorities under their supervision. The Ombudsmen also pursue long-term investigations, which often entail reviews of laws and their enforcement. The Parliamentary Ombudsman needs not show cause for undertaking an investigation. The Ombudsmen have the power to institute prosecutions in court or to report a negligent public servant to the authority where he is employed, for dismissal or disciplinary measures. The normal outcome is, however, that the Parliamentary Ombudsman makes a statement as to

whether, in his opinion, the act or the decision of the public servant is unlawful or inappropriate. The system is of great importance as a guarantee against oppressive measures within the judicial system and the civil administration. It contributes to the creation of public confidence in the activities of courts and other authorities. It is the task of the Equal Opportunities Ombudsman to ensure that the Act of Equality between Men and Women (1980) is observed, and to participate in general efforts to achieve equality in working life. The work of the Ombudsman consists largely of giving information, forming public opinion, and dealing with individual cases of discrimination. The Ombudsman shall, as far as possible, use such methods as counselling, information and discussion, and shall always seek to persuade employers voluntarily to observe the Act. If the Ombudsman is unable to negotiate a settlement in a case of discrimination, the case can be brought before the Labour Court. The Ombudsman Against Ethnic Discrimination was established through the Act to Counteract Ethnic Discrimination (1986). The Ombudsman's duties are concerned with matters of both an individual and general nature. It is the Ombudsman's duty to give advice and information in individual cases and to help those who consider themselves victims of discrimination in order to safeguard their rights. This can be done by giving information about basic rights in relation to the issue at hand on suitable legal action and how to initiate discussions with the party who is alleged to have discriminated against a person and actively endeavour to achieve some kind of settlement.

32. In Finland, the Chancellor of Justice is, together with the Parliamentary Ombudsman, the supreme supervisor of the administration of justice. Its importance in promotion and protection of human rights and fundamental freedoms is evident, firstly, in his general authority to investigate any complaint lodged with him by any person. Secondly, he is the supreme prosecuting authority and supervises public prosecutors. The Chancellor of Justice is present at all sessions of the Council of State (the Cabinet). It is his duty to advise the Council of State in all legal matters and to supervise the lawfulness of all of its decisions. The Chancellor of Justice, appointed by the President of the Republic, submits an annual report to the President and to Parliament on his findings on the observation of law. He may also make comments and suggestions to improve the administration of justice and initiate new legislation. General legal assistance is provided either free of charge or at a low cost to persons who, on the grounds of lack of income, cannot afford expert help in judicial matters.

33. In Finland, the Equality Ombudsman supervises the promotion of equality between men and women and the observance of the prohibition against discrimination on the basis of sex. The primary function of the Equality Ombudsman is to further the position of women in the area of employment. The Ombudsman supervises the observance of the Act on Equality between Men and Women by the employers. According to paragraph 49 of the Constitution Act, the Parliament elects a prominent lawyer to the office of the Ombudsman for four years. The Ombudsman cannot be a Member of Parliament. It is the duty of the Ombudsman to supervise the legality of the activities of judges and other civil servants. In this respect the jurisdiction of the Ombudsman is much the same to that as the Chancellor on Justice. The Ombudsman investigates any complaint made against any authority or any civil servant and gives an opinion. The Ombudsman also makes regular inspections of prisons and other similar institutions. After these inspections he makes a report which

may include suggestions for improvements. The Ombudsman may as a result of his findings during such investigations and inspections initiate new legislation or improvement of administrative practices. He may also decide to prosecute civil servants. The Parliamentary Ombudsman, partly because of his independence, is a most important national institution for the promotion and protection of human rights. The Ombudsman has referred on several occasions in his rulings to the International Covenant on Civil and Political Rights. Like the Chancellor of Justice, the Ombudsman has to submit an annual report on the state of the administration of justice and inadequacies found in the legislation.

B. The Procuratora

34. The Soviet Procuratora's Office has important responsibilities as regards the protection of citizens' rights. Under the Act on the Procurator's Office of the USSR and the amendments and supplements thereto of 16 June 1987, procurators are required to ensure, in exercising their supreme powers of supervision, that all State and public organizations and officials thereof act on the basis of socialist legality and safeguard, within the limits of their authority, law and order, the interests of society and citizens' rights and freedoms. In the present situation, the question arises as how to strengthen the role of the Procurator's Office as the supreme organ of supervision of the legality of the actions of all State bodies. There has been wide acclaim within the country for the actions of the Procurator's Office in defending orphans' rights, halting social injustices in the allocation of housing and defending nature and the environment. The establishment of an independent investigative machinery is intended to promote strict compliance with the law at all stages of investigation. The bar, the most important channel for public monitoring of compliance with the law on the part of State law enforcement bodies and a tool for feedback from society to the State, is being transformed into a fully-fledged institution of the Soviet legal system. The principal goal of the changes is to ensure the genuine equality of defendant and prosecutor and consistent application of the adversary system in trial proceedings. As a further step in the democratization of Soviet justice, defendants are to participate in preliminary investigations from the time of their detention. Awareness is growing in legal circles that democratization of the legal system is impossible without a confirmation of the position of the bar as a nationwide public organization. The recent creation of the USSR Union of Advocates will help to strengthen public control over, and to establish the requisite balance between, State and public elements in the legal system.

C. Other types of specialized judicial bodies

35. In response to the fact that some vulnerable groups, such as persons belonging to ethnic and linguistic minorities, aliens, refugees, indigenous populations, women and children and members of religious minority groups, in various communities are often subject to an inordinately high incidence of discrimination, many Governments have established special bodies to protect them.

1. Agencies for the protection of persons belonging to ethnic and linguistic minorities

36. Over the past decades, a number of States have established special agencies for the protection of the human rights of members of ethnic and linguistic minorities. For example, according to the Government, the Sami, mainly inhabitants of the utmost north of the country, have a special Sami Committee (the Sami Parliament) which deals with legal, economic, social and cultural conditions of the Sami and also other questions relating to special circumstances of this minority. The Committee is elected by the Sami. Although it does not have the authority to make binding decisions, its proposals and other activities are reported to be of great value for the improvement of the position of the Sami. As an example, it is the Government's intention to present to the Parliament, in September 1991, a bill prepared by the Sami Committee for a new Language Act. The Act would guarantee the Sami the right to use their mother tongue in their dealings with the authorities.

37. In addition, the task of the Commission for Lappish Affairs, which has only the power for recommendations, is to ensure uniformity in preparation of matters dealing with the Sami population. The membership of this Commission consists of both representatives of the Sami and the authorities in charge of Sami affairs.

38. On 26 June 1989, the USSR Supreme Soviet adopted a series of decisions which included the setting up of a number of committees and commissions to deal with various aspects of the problem of ethnic relations. The sizes and composition of these committees and commissions have been defined and they have begun active work. While many procedural and institutional questions still remain to be resolved, it is already clear that they are structured as parliaments and have real potential for contributing to the establishment of a State subject to the rule of law.

39. In Singapore, in accordance with the Constitution, the Government set up a Presidential Council for Minority Rights in 1969 to consider matters affecting any racial or religious harmony.

40. In the Bahamas, there are three organizations concerned with the promotion and protection of human rights: the New Providence Human Rights Association; the Grand Bahama Human Rights Association and the Committee on South Africa. These organizations are primarily concerned with action to combat racism and racial discrimination, and seek to focus public attention on the problems facing illegal immigrants and minority groups.

2. Agencies for the protection of aliens, migrants and immigrants

41. In Finland, issues relating to refugees are dealt with by the Committee for Refugee Matters in the Ministry of Social Affairs and Health. The Committee of Migrant Affairs in the Ministry of Labour has been established in order to improve the conditions of migrants. The Counsellor for Aliens, who works under the Ministry of Social Affairs and Health, provides information and guidance to foreigners. The Government has presented a bill to Parliament for the new Alien Act. One of the aims of the bill is to promote the protection and well-being of aliens in Finland.

42. With a view to guaranteeing the return of Guatemala refugees, principally from Mexico and Honduras, the Government of Guatemala has set up, by decision 765-86, a Special Committee for the Care of Repatriates, with the purpose of ensuring that the human rights and fundamental freedoms of repatriates are properly protected. According to the information received from the Government, this Committee enjoys status with the Office of the United Nations High Commissioner for Refugees (UNHCR).

43. In Mexico, a Directorate for Migration Affairs and Human Rights has been set up in the Secretariat for Foreign Relations to deal with matters relating to migration. As part of its overall activities the Directorate carries out studies and projects relating to migration affairs and humanitarian issues and co-ordinates activities undertaken by other units of the Secretariat for Foreign Relations with regard to migration affairs and human rights. The Directorate is specifically responsible for co-ordinating assistance and activities carried out by the Secretariat for Foreign Relations with other Mexican or international institutions. It collects, reviews, classifies and processes information relating to matters within its competence. It provides, in co-ordination with the relevant administrative units, criteria for the formulation of guidelines and directives governing Mexico's participation in United Nations bodies and regional forums concerned with migration affairs and human rights. With specific reference to migration issues, the Directorate receives information on documented and undocumented migration of Mexicans to foreign countries from Mexican consulates and embassies. It represents the Secretariat for Foreign Relations at meetings with the representative of UNHCR and participates in work relating to the Mexican Commission for Assistance to Refugees (COMAR). It also takes part in the work of international bodies relating to migration and migrant workers and maintains contact with national authorities which deal with the issues mentioned with a view to jointly defining the Mexican position in such matters. With regard to its competence in human rights matters, the Directorate promotes respect for human rights in the human rights organs of the United Nations and the inter-American system. It studies and presents proposals on Mexico's position in these matters and furnishes information abroad about Mexican measures adopted in relation to human rights. The Directorate consults other Mexican authorities on human rights cases within their competence in order to respond appropriately to requests for information and follow-up addressed by international bodies to the Government of Mexico.

3. Agencies for the protection of children and minors

44. In Finland, matters concerning the care and upbringing of children are dealt with by the Ministry of Social Affairs and Health and by its subsidiary central authority, the National Board of Social Welfare. There are also social welfare boards in each municipality.

45. According to the Government of Soviet Union, the salient features of the radical changes in progress are the growth of public action in all spheres of life and the effort to activate to the full the mechanisms for self-regulation of society. In this regard, the Lenin Soviet Children's Fund, a self-managing public organization, was set up in 1987 to unite the efforts of individual citizens, work collectives, public organizations, unions of creative workers and State bodies to strengthen the authority and role of the family, protect children's rights and develop their education, leisure activities and contacts

with one another, support young talent and provide special assistance to orphans, children left without parental care, disabled children and children throughout the world suffering from the effects of war, natural disasters or epidemics.

4. Agencies for religious matters

46. In the Soviet Union, the Council for Religious Affairs of the USSR Council of Ministers occupies a special place among the State organs. It monitors compliance with the legislation on freedom of conscience, protects the constitutional rights of believers and religious organizations, and examines citizens' and organizations' petitions and complaints concerning breaches of the law on freedom of conscience. It also makes rulings and verifies that such matters are properly resolved in practice.

5. Legal counselling and assistance

47. In order to safeguard the rights of the individual within the judicial framework, many countries have established a system of legal counselling and assistance for people who are financially unable to defend themselves.

48. For instance, in Finland legal assistance is provided either free of charge or at a reduced fee to persons who cannot afford expert help in judicial matters because of inadequate financial resources.

49. In Japan, the legal aid system is a scheme under which the State provides financial aid to people with insufficient financial resources by making advance payments of all the expenses necessary for filing a suit when this cannot be done for lack of money, although there is expectation of winning the suit legally. In practice this legal aid is given by the Legal Aid Association, a foundation subsidized by the Government. The Civil Liberties Bureau supervises the Association to ensure the proper operation of the legal aid system and is now exerting its efforts to expand and strengthen this programme. Legal aid is available only for civil or administrative cases and does not extend to criminal suits, for which the Government provides a separate system to aid defendants.

III. HUMAN RIGHTS COMMISSIONS AND SIMILAR BODIES ENTRUSTED WITH RESPONSIBILITIES IN THE FIELD OF HUMAN RIGHTS

50. In addition to the organs described above, in recent years one of the most popular forms of national institutions for the promotion and protection of human rights established in various countries have been national commissions or committees on human rights. In general they have been established with a view to ensuring that the laws and regulations concerning the protection of human rights are effectively applied. On the basis of information received from Governments, the role and functions of such commissions and agencies as described below, and such institutions as the ombudsman, seek amicable settlements, with ultimate competence to seize the Courts or the Prosecutor's Offices, but not to take binding decisions themselves.

51. Human rights commissions or committees deal with the protection of citizens against discrimination as well as with the protection of civil and other human rights. They are generally designed to hear and investigate individual charges of human rights violations or discriminatory acts committed in violation of existing law. Most human rights commissions are collegial bodies, comprised of members who, in most cases, are selected by the Executive. In many cases the commissions enjoy statutory independence and are responsible for reporting on a regular basis to the legislative body.

52. In France, for example, the origins of the National Advisory Commission for Human Rights lie in the consultations with non-governmental organizations at the beginning of the 1980s, as a result of which it was established by the French Ministry of Foreign Affairs by decree of 30 January 1984. The aims of the Commission, which was radically reformed in 1986, are to encourage dialogue between the different parties concerned with human rights and, through its views and recommendations, to assist the French Government. The Commission's jurisdiction is both rational and international. A further reform took place on 31 January 1989, when the right to refer an issue to court was included in the decree. The membership of the Commission was expanded to include, in particular, SOS-Racisme and the League for Human Rights. The Commission today has 63 members, who fall into 4 categories: 2 members of Parliament, 24 associations, 20 prominent individuals chosen for their knowledge of human rights issues and 11 governmental representatives (who do not have the right to vote). The new Commission established by the Prime Minister in February 1990 provides enlightenment to the French Government through its views, proposals, initiatives and criticism. Since its creation the Commission has always acted independently. Its Chairman ensures its autonomy, impartiality and objectivity. The Commission, in dialogue with the Government, concerns itself indiscriminately with human rights violations both in France and elsewhere, regardless of the political régime. The Commission supplements its work through consultations with experts and by examining reports and studies which it may request from the competent ministries. In the interests of efficiency and openness, the Commission may make public its opinions. Its work not only includes briefs put forward prior to governmental action, in order to advise the Government before a decision is made, but also relates to major, current human rights problems. Working groups are created to produce reports within their specialized field. The Commission's views are passed on to the Prime Minister. Work covers both international and domestic problems. The Commission has looked into

international problems such as the use of chemical weapons. The Commission has also examined the work of the forty-second and forty-third sessions of the United Nations General Assembly and the forty-third and forty-fourth sessions of the Commission on Human Rights, evaluated the work of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, and taken part in the Executive Committee of the United Nations High Commissioner for Refugees. At the European level, the Commission has followed the work of the Conference on Security and Co-operation in Europe (CSCE) in Vienna, particularly with regard to the "third basket" on human rights. The Commission and its specialized working group have also, on several occasions, looked into the human rights situation and the problems faced by humanitarian aid in certain countries. At the national level, the Commission, amongst other things, has taken an in-depth look at the right of asylum in France, the Code of French Nationality, the draft legislation on parental authority, the draft legislation on action against drug addiction, extreme poverty and AIDS-related problems. In this connection, it has issued an opinion on preventive measures and the protection of individual freedom.

53. Since 19 February 1989, an association for the protection and promotion of human rights has existed in Burkina Faso, called the "Burkina Faso Movement for Human and Peoples' Rights" (MBDHP). According to information provided by the Government, the Movement unites people from all socio-occupational groups in defending and promoting human rights. It has set itself the aims of awakening the conscience and stimulating the awareness of national and international public opinion, studying laws and basic texts, consulting with the national authorities and administration on issues concerning human and peoples' rights, approaching the competent national authorities for steps to be taken to help victims of arbitrary acts, helping people brought to court for expressions of opinion and combating other violations of basic human freedoms and rights. The Movement also engages in a number of promotional activities such as lectures, film shows and participation in international seminars and conferences.

54. In Japan, the Civil Liberties Bureau was established under the Constitution of 1946, which came into force on 3 May 1947, to guarantee the fundamental rights of the people. The Civil Liberties Bureau, under the Ministry of Justice, handles investigations into and collects information on cases involving infringements of human rights; promotion of non-governmental activities for the protection of human rights; matters concerning civil liberties commissioners; and matters concerning habeas corpus, succour in litigation for the poor and other subjects relating to the protection of human rights. The Legal Affairs Bureaux, branches of the Ministry of Justice, are located in eight major cities across the country, and the District Legal Affairs Bureaux in 42 other local cities, and in each of these Legal Affairs Bureaux and District Legal Affairs Bureaux there is a Civil Liberties Department and a Civil Liberties Division, respectively to conduct the same kind of business as that handled by the Civil Liberties Bureau of the Ministry of Justice. In addition, there are 272 branches of the Civil Liberties Bureau established in the Legal Affairs Bureau and District Legal Affairs Bureaux to take care of matters involving human rights infringements in the localities concerned. Civil Liberties Commissioners are placed in cities, towns and villages throughout the country by the commission of the Minister of Justice to exercise vigilance within the respective community against infringement of the fundamental human rights of the people and, in the event of an

infringement, to eliminate it and take remedial steps for the victim, as well as to carry out public informational and educational activities to promote respect for human freedoms and human rights. The procedures for selecting the candidates for appointment as civil liberties commissioners are established on democratic principles. In accordance with such selection procedures, civil liberties commissioners are from almost all professions, including social workers, school teachers, those in the mass media, practising attorneys, many kinds of manual workers in agriculture and forestry; they also include young and old, and men and women alike. The maximum number of such Commissioners, according to the Civil Liberties Commissioners Law, is fixed at 20,000 throughout the country and there are, as of 1 January 1989, 11,640 Civil Liberties Commissioners, including 1,754 female Commissioners, all over the country. The duties of the Commissioners include carrying out public information and education activities to promote respect for human rights. They also promote community campaigns for the protection of human rights. They investigate and collect information on cases involving infringements of human rights so that remedial steps can be taken, and take appropriate action, such as reporting to the Minister of Justice and giving advice or warnings to the agencies involved. They provide help in litigation and take other appropriate relief measures for the poor.

55. According to information submitted by the Government of the Philippines, an independent office called "Commission on Human Rights" was set up in accordance with the provisions of Article XIII Section 17 of the Philippines Constitution with the primary mandate of investigating, on its own or on receipt of a complaint from any party, all forms of human rights violations involving civil and political rights. Serving as the governing body, the Commission is composed of the chairman, the commissioners and Commission secretary. This Commission is the successor to the Presidential Committee on Human Rights, which was created by the President on 16 March 1986 and which had similar powers.

56. The President of the Philippines appoints the chairman of the Commission on Human Rights along with four others as members. Legislation on human rights covers the priority concern of strengthening the Commission on Human Rights as the national institution for the promotion and protection of human rights in the country. In order to give the needed independence to the Commission for performing and accomplishing its functions and duties, the term of office of the chairman and the members of the Commission has been set at seven years without re-appointment.

57. Under the provisions of the Constitution (section 18 of Art. XIII), the Commission on Human Rights shall have the following powers and functions: to investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights; to adopt its operational guidelines and rules of procedures, and cite for contempt for violations thereof in accordance with the Rules of Court; to provide appropriate legal measures for the protection of the human rights of all persons within the Philippines, as well as Filipinos residing abroad, and provide for preventive measures and legal aid services to the underprivileged whose human rights have been violated or need protection; to inspect gaols, prisons, or detention facilities; to establish a continuing programme of research, education, and information to enhance respect for the primacy of human rights; to recommend to the Congress effective measures to promote human

rights and to provide for compensation for victims of violations of human rights, or their families; to monitor the Philippine Government's compliance with international treaty obligations on human rights; to grant immunity from prosecution to any person whose testimony or whose possession of documents or other evidence is necessary or convenient to determine the truth in any investigation conducted by it or under its authority; to request the assistance of any department, bureau, office or agency in the performance of its functions; to appoint its officers and employees in accordance with law; and to perform such other duties and functions as may be provided by law. Various inter-agency programmes of action have been developed in the fields of investigation, legal services, financial assistance, gaol visits, services to detainees and prisoners. Recently, the Commission has discussed the human rights issues that arise from public assemblies, rallies and demonstrations with national teachers' organizations and national unions of students.

58. Republic Act No. 6688 or General Appropriations Act, FY, 1989 provided the Commission on Human Rights with a budget of P56,668,000 for general administration and operation of services and programmes with respect to: (a) investigation, on its own or on complaint by any party, of all forms of human rights violations involving civil and political rights; (b) provision of appropriate legal services for the promotion of human rights of all Filipinos; (c) development of a continuing programme of research, education and information to enhance respect for the primacy of human rights including recommendation to Congress on measures for its promotion and protection; and (d) assistance to victims of human rights violations.

59. The Commission is also to set up offices in each of the administrative region, which shall perform the functions of the Commission in the provinces, cities and municipalities.

60. The Commission has, aside from its complaint-handling competence, activities of a promotional nature such as dissemination of human rights materials and other public information activities under the auspices of the United Nations; support of research, information and education activities that enhance respect for human rights.

61. In Guatemala, in accordance with the relevant provisions of the Political Constitution of the Republic, and with a view to creating mechanisms for monitoring compliance with human rights, the Government, by Decree-Law No. 54-86, has promulgated an Act Establishing the Human Rights Commission of the Congress of the Republic and the post of Attorney for Human Rights. The principal purpose of the Human Rights Commission is to promote the study and updating of existing human rights legislation. The Commission consists of one deputy from each of the political parties represented in the Congress. One of its functions is to propose to the Congress candidates for the post of Attorney for Human Rights, and to act as an intermediary between the said Attorney and the Congress. It is also the responsibility of the Commission to give an opinion on human rights treaties and conventions. The Attorney for Human Rights is a commissioner appointed by the Congress of the Republic for the defence of human rights guaranteed under the Constitution, as provided for by the Universal Declaration of Human Rights, and international treaties to which Guatemala is a party. The Attorney for Human Rights has juridical powers, and he is not subordinate to any organization, institution or official. Because of the independence that he enjoys, no organ of the State

is authorized to obstruct the Attorney for Human Rights in the exercise of his functions. The Attorney's functions include the investigating and reporting of administrative behaviour prejudicial to the interests of persons, the investigating of any complaints concerning human rights violations that may be brought to his attention, and the instituting of actions or proceedings, whether judicial or administrative, in cases in which they are appropriate. The competence of the Attorney extends to anything connected with respect for human rights that may occur in the country.

62. In Mexico, the General Directorate for Human Rights has been set up within the Secretariat for the Interior. The new Directorate, in accordance with the Secretariat's internal regulations published on 13 February 1989, fulfils various functions: it proposes programmes to promote and encourage compliance with the agreements to which Mexico is a party within the framework of the Universal Declaration of Human Rights; it proposes draft initiatives, programmes, actions and mechanisms to contribute to human rights policy planning in Mexico and measures to safeguard human rights; it establishes liaison and co-ordination mechanisms with public or private agencies, institutions and bodies to promote the exercise of and respect for human rights; it establishes and deals with administrative complaints regarding violations of human rights submitted by individuals or public or private institutions and proposes action for their prompt resolution. On 23 February 1989, the President of the Republic, Carlos Salinas de Gortari, initiated a legal and political process to improve the co-ordination of national policy. The decision taken by the Head of the Executive included setting up a meeting with the Governors of the States, with a view to considering, in accordance with their own legislation and political and social circumstances, the possibility of the States joining this reconciliation effort. The President also proposes a programme to amend and make additions to the Penal Code for the Federal District on common matters and for the entire Republic on federal issues, under which persons who have committed offences for political reasons may be granted a pardon, provided their conduct shows a high degree of social readjustment and their release presents no danger to peace or security, and provided that they have not been convicted of other international offences or offences against public health or of terrorism, kidnapping or rape or offences deliberately causing loss of life. The initiative is intended to harmonize the law with contemporary standards of justice. It is prompted also by a desire to respond to the demand of citizens for pluralism and by concern to strengthen national unity and the country's institutional life and allow participation of all sectors of society.

63. Morocco has three national associations or organizations to defend human rights. The oldest is the Moroccan League for the Defence of Human Rights (LMDH), which was formed in 1972. Next came the Moroccan Human Rights Association (AMDH), established in 1979. The third and most recent association is the Moroccan Human Rights Organization (OMDH), founded on 10 December 1988 on the occasion of the fortieth anniversary of the Universal Declaration of Human Rights. Furthermore, a Human Rights Consultative Council was established on 8 May 1990 by King Hassan II, with a membership comprising Moroccans of all political and trade union tendencies and occupations, as well as the different Moroccan human rights associations and relevant ministers. Its main role is to strengthen the constitutional State and to defend the rights of man and the citizen against any abuses or ultra vires actions.

IV. ROLE OF NON-GOVERNMENTAL ORGANIZATIONS IN THE PROMOTION AND THE PROTECTION OF HUMAN RIGHTS

64. Previous reports on national institutions have described the significant role played by non-governmental organizations in promoting and protecting human rights at the national level. In their functions of a promotional nature they have been using a wide variety of techniques, including seminars, symposia and other meetings, the publication of brochures and periodicals, educational activities and mass media campaigns for raising public consciousness and awareness. Aside from their promotional functions they also play an important role in denouncing violations of human rights and fundamental freedoms which affect aggrieved individuals and various vulnerable groups, such as prisoners, handicapped persons, refugees, foreign workers, minorities and indigenous populations. By exposing human rights violations they attract public attention. Moreover, the establishment by these organizations of liaison and other contacts with legislative, administrative and judicial branches of Government, and the offering of assistance and specific services to vulnerable persons or groups, foreign workers, minorities and indigenous populations, help to ensure stricter application of the laws and regulations relating to the protection of human rights.

65. In Finland, non-governmental organizations such as the Finnish section of Amnesty International, the Finnish Red Cross, the Central Union for Child Welfare, the Finnish United Nations Associations, Unioni, Women's Rights Union of Finland, the Finnish Gipsy Association, the League for Human Rights and Freedoms, Ihmisoikeusjuristit, the Finnish section of the International Commission of Jurists, the Institute for Human Rights and Abo Akademi University carry out activities aimed at promoting human rights.

66. There are numerous human rights organizations in the Philippines, most of which are non-governmental institutions that existed prior to the creation of the Philippines Commission on Human Rights. Knowing the importance of working effectively with non-governmental organizations, the Commission works towards further improving and enhancing harmonious relationships with these institutions. It has hosted and sponsored various sectoral and intersectorial dialogues, inter-agency meetings, workshops, seminars and training on human rights. Meetings conducted by the Commission include the following:

(a) Meetings with labour organizations on trade union and human rights, firming up of joint programmes and undertakings and holding of conference-workshops involving the labour sector;

(b) Meetings/dialogues involving the military and religious organizations on alleged harassment of Church members and the establishment of an effective liaisoning group to be institutionalized at the national and regional levels;

(c) Meetings with Government and non-governmental organizations regarding the development and implementation of an Assistance and Visitorial Services Programme for the provision of financial assistance, conduct of gaol visits' activities and protection of human rights witnesses;

(d) Dialogues between and among representatives of students, teachers, and government employee unions regarding the observance of the constitutional right to peaceful assembly and redress of grievances and the attendant responsibilities thereof.

67. In the USSR, a number of public, non-governmental institutions have been developed in recent years. For instance, the Soviet Fund for Culture, which was founded in 1987, has as its objectives the enrichment of and wider public participation in cultural life. The Fund is supported by various national cultural organizations and by leading public figures. The Charity and Health Fund set up in 1988 is holding an all-Union series of charity concerts. The All-Union Organization for War and Labour Veterans was founded in December 1986 and, by its statutes, has as its main organ the All-Union Council for War and Labour Veterans, which promotes and protects the rights of the elderly, of war and labour veterans, and of pensioners and disabled persons. The organization is seeking to obtain the release of Soviet military personnel taken prisoner in Afghanistan. The Committee of Soviet Women and various women's leagues' activities, include the protection of women's rights, the encouragement of greater involvement by women in public and political affairs and the enhancement of the role of women in the management of society and the State. They also assist in the successful discharge by women of their maternal and family obligations. The Public Commission for International Co-operation in Humanitarian Affairs and Human Rights was set up in 1987 as a non-governmental organization under the auspices of the Soviet Committee for European Security and Co-operation. The Commission's aims include the furtherance of legislative reform in the USSR, promotion of citizens' awareness of their constitutional legal rights, and co-operation with Soviet and foreign human rights organizations.